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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Telephone Number Portability

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CC Docket No. 95-116  
RM 8535

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**Further Reply Comments of the United States Telephone Association**

The United States Telephone Association (USTA) submits these further reply comments in response to the Public Notice issued in the above-referenced proceeding.<sup>1</sup> USTA is the principal trade association of the local exchange carrier (LEC) industry. USTA represents over 1100 LECs, with a wide variety of company sizes within its membership. These reply comments respond to the initial comments on the effects of passage of the Telecommunications Act of 1996 on the issues raised in the NPRM in this docket.

**INTRODUCTION**

The initial comments evidence wide agreement that, with passage of the Telecommunications Act of 1996 ("1996 Act"), the Commission should take a lead role in developing a long-term solution for local number portability. The Commission should act quickly and decisively to establish guidelines for number portability and direct an industry group to establish operational criteria for a long-term solution.

However, contrary to the suggestion of some commenters, the 1996 Act does not preclude the Commission from examining the costs and benefits of particular solutions, from delegating authority over the long-term solution to states or industry bodies, or from merely establishing guidelines and permitting the development of a variety of efficient and interoperable solutions for

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<sup>1</sup>In the Matter of Telephone Number Portability, CC Docket No. 95-116, DA 96-358 (Released March 14, 1996); see Id., FCC 95-284, (Released July 13, 1995) ("NPRM").

the long-term. The 1996 Act does not require the implementation of any single particular solution. While the Location Routing Number (“LRN”) addressing scheme may well be adopted as part of the long-term solution, that outcome is not required by the Act. Finally, while the Act imposes an immediate duty on both competitive and incumbent LECs to offer number portability, it does not require immediate adoption of a long-term solution.

**I. The 1996 Act Does Not Eliminate Relevant Issues Raised in the Commission’s Notice**

**A. The 1996 Act Does Not Eliminate Cost-Benefit Analysis from the Commission’s Consideration**

Some of the initial comments seize upon the Act’s mandatory number portability obligation language as support for a radical proposition: the Commission must impose number portability without regard to costs (whether those costs are imposed on LEC shareholders or the American public). See, e.g., Comments of Time Warner at 3-4 citing American Textile Mfg’s Inst., Inc. v. Donovan, 452 U.S. 490, 509 (1981); Comments of Teleport at 4. These commenters argue that the only relevant question under the Act is whether number portability is “technically feasible,” and if so, the Commission’s inquiry is at an end. See, e.g., Comments of Time Warner at 3. Similarly, the Interactive Services Association (ISA) argues that regardless of whether it is economically prudent to make 900 numbers portable, the 1996 Act requires LECs to offer information providers the ability to change 900 carriers while retaining the 900 number through which their services are offered. See Further Comments of ISA at 4 (“economic arguments are no longer relevant”).

These arguments misread relevant precedent and the 1996 Act. The 1996 Act requires that LECs “provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” 1996 Act, Section 251(b)(2). There is no comma after the words “number portability” - a LEC’s duty is not simply to provide any form of number portability to the extent technically feasible, but to provide long-term number portability consistent with performance characteristics prescribed by the Commission, to the extent

technically feasible (and interim portability, to the extent it may not be technically feasible).<sup>2</sup> Time Warner's reference to the "technically feasible" language proves nothing: the "technically feasible" language does not address the question of whether number portability is capable of being done, but whether provision of the long-term solution through regulations prescribed by the Commission is capable of being done.

Moreover, under Donovan, the agency promulgating rules retained discretion to determine which solution most fully addressed the harm at issue. See 452 U.S. at 509-510. Here, the Commission similarly retains discretion to determine which solution best promotes local competition. Given that the obligation to provide number portability applies to both incumbent and competitive LECs (a fact seemingly lost on Time Warner),<sup>3</sup> the Commission should ensure that inefficient costs of number portability do not stifle the benefits of competition. See Further Comments of Sprint at 5 ("deployment of a permanent portability solution should balance the benefits of rapid implementation with the resource constraints faced by local exchange carriers"). Similarly, the Commission has the discretion to determine whether its regulations should require service provider portability for end users who are 900 information providers, or any other form of portability. Put simply, the 1996 Act obligates LECs to offer number portability as prescribed by the Commission, not to offer number portability to any party without regard to the circumstances.

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<sup>2</sup>As noted in its Further Comments, USTA believes that the Act requires all LECs to offer some form of number portability upon request. Further Comments of USTA at 4. Accordingly, there is no basis for the position taken by ALTS that the BOCS (or any LEC) could cease to offer any form of number portability until the ultimate implementation of full number portability. Further Comments of ALTS at 3.

<sup>3</sup>For example, Time Warner refers to LECs as the entities that "stand to lose the most" from deployment of number portability. Further Comments of Time Warner at 5. As all LECs are obligated to offer number portability, all LECs benefit from an efficient technological solution for providing that functionality. Alternatively, Time Warner's argument that the Commission may not consider the costs of the particular number portability solution which LECs are required to implement may presume that the costs of that solution will be borne primarily (or entirely) by incumbent LECs, a result which is precluded by the 1996 Act. Section 251(e)(2).

**B. While the 1996 Act Defines Number Portability As Service Provider Portability, Consideration of Location Portability is Relevant**

As numerous commenters note, the 1996 Act defines number portability in such a manner which limits the obligation of LECs to providing the ability of an end user to retain his/her number when changing service providers. See, e.g., Further Comments of SBC Communications, Inc., at 2; Further Comments of Telecommunications Resellers Assn. at 2. The NPRM requested comment as to whether the long-term number portability solution should include implementation of other types of number portability, e.g. location portability. See NPRM, at para. 26. As these commenters note, the Congressional definition excludes location portability or service portability from its definition, and from the requirements of the “competitive checklist” required for BOC interLATA entry in Section 271. Consequently, service provider portability is at the heart of the Congressional requirements for number portability; deployment of service provider portability is sufficient to meet the requirements of the Act.

Nevertheless, to the extent that location portability within a given NPA is important to ensure competitive parity and maximize customer choice, the Commission should not mandate performance characteristics which preclude efficient implementation of location portability. See Further Comments of Time Warner at 3, n.5. While the emphasis is clearly on service provider portability, the long-term number portability solution should not require deployment of inefficient techniques which cannot accommodate requests for location portability. Moreover, many of the competitive LECs who suggest that the Commission forget about location portability may be the same companies who later request this functionality in order to compete. The 1996 Act’s emphasis on service provider portability does not eliminate consideration of location portability as a valid future capability available in the long-term number portability solution.

**II. The 1996 Act Does Not Require That the Commission Adopt Any Particular Solution For Long-Term Number Portability**

Some commenters take this occasion as a further opportunity to argue their case for a

particular method of providing number portability. See, e.g., Further Comments of MCI at 3 (“LRN is the only approach consistent with the new law”); Further Comments of California Cable Television Association at 4 (“only AT&T’s LRN solution meets all of the criteria established by Congress”). While Congress intended that subscribers using number portability to change carriers not suffer impaired service, see 1996 Act, Section 3(46), and that number portability be implemented expeditiously, Congress did not require that the Commission mandate a single long-term solution for providing number portability.

Rather, all that Congress required is that the Commission develop regulations concerning number portability. As USTA suggested in its initial comments in this proceeding, the Commission can best serve the public interest by establishing mandatory performance characteristics, and directing an industry body to develop (or agree upon) a technical solution. A number of further commenters support this approach. See, e.g., Further Comments of Time Warner at 8 (“the Commission should establish baseline criteria with which all true number portability solutions must comply”); Further Comments of at 4. The Commission should begin this process expeditiously.

It may ultimately prove to be the case that an industry body elects to adopt the LRN addressing scheme as part of the long term number portability method. Indeed, a number of USTA member companies support that particular addressing scheme. See, e.g., Comments of Ameritech at 9; see also Further Comments of NYNEX at 5 (LRN holds the best promise of any addressing scheme evaluated thus far, but LRN is only part of the overall solution). Others note that reliable cost estimates for LRN have not been established, nor all the technical problems identified, yet alone resolved. See, e.g., Further Comments of GTE at 5; Further Comments of Bell Atlantic at 2. Congress did not intend for the Commission to sweep aside issues of cost or technical efficiency and simply mandate an available technology as a partial answer. Rather, Congress most likely intended that the Commission address issues of cost, technical efficiency, and interoperability in order to develop a sensible long-term number portability plan.

MCI and AT&T's extensive discussion of whether LRN is the proper addressing scheme for a long-term number portability solution, issues related to the functioning of various other solutions (including interim solutions), and other technical matters, is outside the scope of this proceeding. MCI and AT&T's attempt to use this further comment cycle concerning the effects of the 1996 Act to argue these technical issues is inappropriate. Technical issues should be discussed and resolved within an industry group of technical experts qualified to address these issues, and tasked by the Commission with the role of addressing these issues.

Moreover, AT&T and MCI's description of LRN as a "permanent LNP solution" is inaccurate. See, e.g., Further Comments of AT&T at 2; Further Comments of MCI at 7. LNP is merely an addressing scheme, and many other aspects of the long-term solution need to be addressed. See, e.g., Further Comments of MCI at 6-7 (work efforts have been undertaken in other key areas, including network operations, operator services, and rating and billing). Technical solutions for these aspects of number portability must be developed before reliable cost estimates can be generated, and any implementation can begin. The fervor with which competitive LECs such as AT&T and MCI argue for immediate mandatory deployment of incomplete number portability methods demonstrate that the Commission must act quickly to direct an industry group to recommend a complete long-term number portability method.

### **III. The Further Comments Support Delegating Implementation Decisions to the States**

In its initial Further Comments, USTA noted that the decision as to when a particular LEC must deploy the long-term solution might be one best made by state regulators, who are better attuned to the state of local service competition in their areas, and who bear responsibility for local service rates which will be affected by the costs of number portability. Further Comments of USTA at 3, n.2. Other commenters agree that, while the Commission has an essential role in leading the development of baseline criteria for a long-term solution, the implementation plan should involve state regulators. See, e.g., Further Comments of Time Warner at 9 ("the Commission should delegate to the states the authority to implement true service provider portability solutions in compliance with its baseline criteria"). As noted by OPASTCO, this result

would be consistent with the 1996 Act's provisions permitting LECs with less than 2% of the nation's access lines to petition the state for suspension or modification of the requirements of Section 251(b) or (c), which includes the obligation to provide number portability. 1996 Act, Section 251(f)(2); see Further Comments of OPASTCO, at 7-8.

While USTA agrees that long-term number portability should not be excessively delayed, the Commission is not required by the 1996 Act to establish national target dates for implementation. See, e.g., Further Comments of MCI at 9 (establish Sept. 1, 1997 as deadline for nationwide LRN); Comments of AT&T at 8 (schedule for introducing LRN into various markets). As Bell Atlantic notes, it would be premature to require deployment of a service for which the cost recovery mechanism has not been established. Further Comments of Bell Atlantic at 2. Also, any target date for implementation must be justified by the presence of competition. Arguments suggesting that the FCC mandate deployment in selected MSAs, see, e.g., Further Comments of AT&T at 8, ignore whether or not competition is yet present in those areas. There is simply no basis for deploying the ability of a subscriber to retain his/her telephone number when switching carriers in locations in which subscribers do not yet have the option of switching carriers. Number portability need only be deployed within a reasonable time of a bona fide request of a competitive carrier.<sup>4</sup>

#### **IV. The 1996 Act Requires Competitively Neutral Cost Recovery**

A number of commenters note that the 1996 Act explicitly provides that the cost of establishing number portability "shall be borne by all telecommunications carriers on a

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<sup>4</sup>The language of the Act is relevant here also - LECs are obligated by Section 251(b)(2) to provide number portability; the Act does not require LECs to e.g., "deploy software and network upgrades necessary to provide number portability." See also Conference Report, No. 104-458, Senate Report at 5 ("If requested, a local exchange carrier must take any action under its control to provide interim or final number portability as soon as it is technically feasible"). Again, efficient deployment upon request should serve the interests of competitive LECs as well as incumbents - a CLEC would retain the discretion to utilize interim solutions or request the deployment of the long-term solution, depending on its own business judgment.

competitively neutral basis as determined by the Commission.” 1996 Act, Section 251(e)(2). Yet some commenters derive from this premise positions which fail to take into account some of the legal requirements imposed on incumbent LECs. For example, both MFS and Teleport argue that competitive neutrality dictates that no carrier pay for upgrades in another carrier’s network - noting that in a competitive market Ford is not required to upgrade Toyota’s plants to meet a federal air bag requirement. Further Comments of MFS at 5; Further Comments of Teleport at 5. Similarly, ALTS argues that LECs should not be permitted to assess separate charges for customers who change carriers, but that internal costs of number portability should be borne by all subscribers. Further Comments of ALTS at 7.

To the extent that the internal costs of number portability are equal as between competitors, each carrier’s recovery of its own internal costs is permitted under the Act.<sup>5</sup> But unlike the business initiatives available to Ford and Toyota, all LEC competitors are not equal - incumbent LECs are significantly restricted as to the costs that can be recovered through increased prices. The federal air bag requirement added to the price of every new car - to what extent the price was raised was determined by the manufacturer. The types of decisions and options characteristic of auto makers or other non-regulated businesses are not options open (as of yet) to incumbent LECs.<sup>6</sup>

Additionally, Teleport’s statement that “competitive neutrality would dictate that no carrier pay for upgrades in another carrier’s network,” Further Comments of Teleport at 5, should not be read overbroadly. To the extent that competitive LECs choose not to deploy their own operating, signaling, routing, billing or other administrative support systems associated with number

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<sup>5</sup>Of course, as Bell Atlantic notes, it may be the case that each carrier’s costs are not equal - incumbent LECs may be required to make more extensive and costly upgrades to provide number portability in a given area. Further Comments of Bell Atlantic at 1.

<sup>6</sup>Teleport’s “somewhat facetious” remark that an RBOC’s costs for number portability can be viewed as a “deregulation surcharge” paid for long-distance entry again ignores the fact that all LECs (not just RBOCs) are required to offer number portability. USTA’s membership numbers over 1100 LECs, many of whom already provide long distance service.



portability, but obtain these services from incumbent LECs, the 1996 Act expressly contemplates that competitive LECs will pay for these services. See Section 252(d).

Finally, implementation of ALTS' suggestion to preclude separate charges for number portability implies an across-the-board increase on a LECs' subscriber base.<sup>7</sup> For incumbent LECs, such increases must be approved by state regulators. The Act's requirement of competitively neutral cost recovery must take this into account.

Cost recovery for interim solutions should similarly be on a competitively neutral basis. MFS argues that if competitive LECs are charged for interim number portability, those costs will be borne solely by them, thus violating the principle of competitive neutrality. MFS argues that interim number portability solutions should be provided "at no cost to the new entrant." Further Comments of MFS at 8. But interim number portability solutions are not without costs. Competitive neutrality in cost recovery would not permit an arrangement where no costs are shared by the new entrant, and all costs are borne by the incumbent. In MFS' own description, the 1996 Act requires that "the costs of number portability be borne by all telecommunications providers," Further Comments of MFS at 8. This standard precludes regulations which exempt new entrants from the costs of number portability. "Competitively neutral" cost recovery for interim solutions should examine whether the costs of interim number portability borne by the new entrant substantially impede their ability to compete vis-a-vis all other LECs.

## CONCLUSION

The initial comments in this proceeding uniformly encourage the Commission to take a strong leadership role in developing the baseline criteria for a long-term number portability solution. Yet, some of the initial comments also misread the Act to require the Commission to

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<sup>7</sup>ALTS is careful to limit its argument to all local exchange customers who gain the ability to port their numbers, recognizing that not all LEC subscribers benefit from number portability. Similarly, ALTS notes that economically rational cost recovery would preclude cost recovery from any other group of customers, e.g. those subscribers who yet do not have competitive options should not bear the costs of number portability. See Further Comments of ALTS at 7.

mandate a particular solution, to mandate its deployment, and to ignore the issue of costs in its consideration. None of these actions is required under the Act, and more sensible actions are available to the Commission, as described in USTA's further comments. The Commission should expeditiously adopt minimum performance characteristics for number portability and direct an industry group to recommend technical solutions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Carl McFadgion, do certify that on April 5, 1996, copies of the foregoing Further Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
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